

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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IN RE: BAIR HUGGER FORCED AIR      MDL No.: 15-md-02666 (JNE/FLN)  
WARMING PRODUCT LIABILITY  
LITIGATION

This Document Relates To:

MICHAEL MCDANIEL,

Civil Action No.: 17-CV-03311-JNE-FLN

Plaintiff,

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**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

NOW COMES Plaintiff, Michael McDaniel, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 1124], and by and through undersigned counsel submits this, his Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

1. In July of 2015, Mr. Michael McDaniel contacted undersigned counsel regarding an infection and subsequent treatment that he experienced due to the use of a Bair Hugger patient warming device during an orthopedic surgery.
2. Counsel worked to obtain medical records and billing records to move forward with the case.
3. On July 25, 2017, counsel filed the current action to comply with what was identified as the applicable statute of limitations deadline for the relevant claim.
4. Efforts to have Mr. McDaniel complete the Plaintiff Fact Sheet were complicated by the inability to contact the client.

5. On November 17, 2017, counsel learned that Mr. McDaniel had passed away on June 29, 2017.
6. A Suggestion of Death regarding the passing of Mr. McDaniel has recently been filed with the Court in compliance with PTO 23. [17-cv-03311, Dkt. 6].
7. Counsel spoke with Ms. Maebell McDaniel, the mother of Mr. McDaniel, on November 28, 2017. Ms. McDaniel was unable to provide information necessary to complete the Plaintiff Fact Sheet at that time.
8. Counsel for Plaintiff believe that additional time could allow them to obtain the necessary information from Ms. McDaniel and complete the Plaintiff Fact Sheet.
9. While counsel has diligently continued their attempts to obtain information from Ms. McDaniel, those efforts have not been successful to date.
10. As a result, counsel has not been able to obtain the necessary information to complete the Plaintiff Fact Sheet for this claim.

Accordingly, undersigned counsel request that the current action not be dismissed with prejudice and that Ms. McDaniel be given an additional sixty (60) days to contact counsel in order to provide the necessary information to cure any alleged deficiencies with the Plaintiff Fact Sheet and to continue the case on behalf of her son.

Dated: March 8, 2018

KENNEDY HODGES, LLP

By: /s/ David W. Hodges  
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ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

This is to certify that on March 8, 2018 a copy of the forgoing instrument was served on all parties via the Court's electronic filing system.

By: /s/ David W. Hodges  
David W. Hodges